

New Hampshire Commission for Human Rights



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Debra Ramirez

v.

Hadlock Insurance

ES(P) 6338-98

DECISION OF THE COMMISSION

RECEIVED

JAN 25 2000

NH COMMISSION
FOR HUMAN RIGHTS

I. Background

Debra Ramirez was hired as a part-time receptionist by Hadlock Insurance on January 29, 1998. She was subsequently promoted, on March 23, 1998, to a full-time position, performing receptionist duties and training to be a processor. At her request, she returned to part-time status on June 1, 1998. She resigned her position on July 2, 1998.

Ms. Ramirez testified that she met with Bruce Hadlock, owner of the family-run agency, when she was promoted to the full-time position. She states that he described the benefits associated with full-time work, including the maternity and vacation policies. She states that Mr. Hadlock told her that the company had two bad experiences with pregnant employees. One had returned to work after her maternity leave, but lost time and quit. Another gave birth to a child with a cleft palate, and that the company had paid her for an extended maternity leave. She quoted Mr. Hadlock as saying that he would handle things differently if another employee became pregnant.

At the time when Ms. Ramirez was hired full-time, the plan was for her to work three days a week as a receptionist. On the other two days, she was to be trained as a processor. She was then supposed to work on what the parties describe as the Concord Group project. That project, scheduled to begin during the summer of 1998, involved examining the history of customers insured through Concord Group. It was anticipated to last for

approximately two years. The complainant was to work full-time on the project, no longer performing receptionist duties.

Ms. Ramirez learned on May 13, 1998 that she was pregnant with her second child. She informed Casey Hadlock, son of owner Bruce Hadlock, of her pregnancy on May 15, 1998.

Ms. Ramirez testified that she met with Casey and Bruce Hadlock on May 18, 1998. She said Bruce Hadlock informed her that the company had interviewed another woman who had eight years experience as a processor. She said he told her that the company wanted to hire the more experienced woman and return Ms. Ramirez to part-time status.

At another meeting, on May 19, 1998, attended by family members Casey, Bryan, Maxine and Bruce Hadlock, Ms. Ramirez testified that Bruce Hadlock informed her that she would remain full-time through the summer vacation season and then resume her part-time status prior to her maternity leave. As a part-time employee, Ms. Ramirez would not have been eligible for fringe benefits, including paid maternity leave.

Ms. Ramirez testified that the atmosphere in the office changed after that meeting. She said the Hadlocks stopped talking to her and she said she felt she did not belong. She also described an incident at her doctor's office in which Casey Hadlock held a door for another patient, but then shut it in her face.

On May 29, 1998, she asked to return to part-time status as a receptionist.

She said she resigned on July 2, 1998 because the stress of being ignored was affecting her health.

Bruce Hadlock denied in his testimony that he talked to Ms. Ramirez about past pregnant employees or that he described the company's fringe benefits when Ms. Ramirez was promoted to the full-time position in March 1998.

Mr. Hadlock said the purpose of the May 18, 1998 meeting was to make Ms. Ramirez comfortable about her future with the company. He said he described the maternity plan at that point, and said that it went beyond state requirements. He said he always paid for maternity leave if the employee was returning to work, and wanted to know if Ms. Ramirez planned to return. He said Ms. Ramirez said she was unsure that she would return after maternity leave. He said she later told him that she did not want to place her child in daycare.

The purpose of the May 19, 1998 meeting was to reaffirm that Ms. Ramirez would remain a full-time employee, according to the

testimony of Casey and Bruce Hadlock. Bruce Hadlock said he did inform her that she would not be working on the Concord Group project. He said he told her there was plenty of other work for her.

Bruce Hadlock testified that he learned after the meeting that Ms. Ramirez was upsetting other employees by talking about a possible lawsuit against the company and was in contact with the New Hampshire Human Rights Commission. In order to protect himself, he decided limit his conversations with Ms. Ramirez to business topics.

He said Ms. Ramirez requested that she return to part-time status on May 29, 1998 because of the difficulty involved with driving her child to St. Johnsbury, Vermont, where Ms. Ramirez' mother took care of Ms. Ramirez' first child. He testified that Ms. Ramirez never mentioned stress in the office as a reason for reducing her hours.

Casey Hadlock described the Concord Group project. He testified that the insurance company handles about half of the agency's business. The said Concord Group required the agency to assess its policy holders because covered losses exceeded premium revenues. The responsibility of the processor in the position held by Ms. Ramirez was to mail questionnaire forms to customers and then provide completed forms to underwriters in the office. The questionnaire forms were ready in June 1998.

He further testified that after the May 18, 1998 meeting the Hadlocks were concerned about handling the Concord Group project while Ms. Ramirez was on maternity leave. They were also concerned about Ms. Ramirez returning to work because she had said she would not place her baby in daycare.

During the May 19, 1999 meeting, Ms. Ramirez was told that the agency would keep her in the processor's job, but that she would not be assigned to the Concord Group project.

Casey Hadlock also testified that the incident at the doctor's office occurred after Ms. Ramirez left the agency. He said he passed Ms. Ramirez on the walkway leading to the office, but the two did not acknowledge each other. He said he entered the building and let the door go, and had no intention of doing anything improper.

Kimberly Ruggles, a customer service representative for the agency, testified that she had been pregnant during her tenure with the agency. She required a longer than usual maternity leave because of medical complications, and was paid for the full period. She further testified that she needed to spend 10 days in Boston when her child needed surgery to correct a cleft palate. She was allowed to use paid vacation time when the baby was

hospitalized.

Ms. Ruggles also said that she took breaks with Ms. Ramirez in the company's lunchroom and was never told not to speak or otherwise interact with Ms. Ramirez. She said there was no effort to ostracize Ms. Ramirez.

The agency's pregnancy policy is included in a description of fringe benefits. (Complainant's exhibit #2) The maternity policy reads: "Six (6) weeks paid, subject to the upcoming year of one year, full-time employment following maternity leave.

The illness policy provides 30 days 100% pay; 6 to 8 weeks at 75%; 8 to 12 weeks at 50%; and no pay after 12 weeks.

II. Legal Standard

Under RSA 354-A:7 VI, the prohibition against sex discrimination includes pregnancy and medical conditions which result from pregnancy. The law requires employers to allow a female employee to take leave of absence for the period of temporary disability associated with pregnancy, and to make her original job or comparable position available when she is physically able to return to work, unless business necessity makes this impossible or unreasonable. For all other employment related purposes, including receipt of benefits under fringe benefit programs, a female employee affected by pregnancy shall be treated in the same manner as any employee affected by any other temporary disability.

In situations where a complaining party quits a job because of discrimination, she may recover lost wages by proving "constructive discharge." Constructive discharge means that working conditions are so intolerable that any reasonable person would have no choice but to quit.

III. Analysis

Ms. Ramirez attempts to establish a prima facie case of discrimination through a series of alleged incidents:

- 1) Bruce Hadlock's comment that he would handle things differently if another employee became pregnant;
- 2) Her removal from the Concord Group project;
- 3) Notification that she would be reduced to part-time status before her maternity leave began; and
- 4) The social ostracization after the May 19, 1998 meeting.

She states that she initially reduced her hours and subsequently quit because of the stress she felt in the office.

Bruce Hadlock denies that he told Ms. Ramirez that he would handle the case of another pregnant employee differently. Casey and Bruce Hadlock confirmed that Ms. Ramirez was removed from the Concord Group project, but testified that the company intended to retain her in a comparable position as a processor. The Hadlocks deny that Ms. Ramirez would be reduced to part-time status. They also testified that what Ms. Ramirez described as social ostracization was an attempt to keep conversations limited to business topics after hearing from other employees that Ms. Ramirez intended to take legal action against the agency.

IV. Conclusion

The commission credits Bruce Hadlock's testimony that he did not tell Ms. Ramirez that he would handle future pregnancies differently. The evidence shows that the agency had a legitimate business necessity for removing Ms. Ramirez from the Concord Group project, but that she would have remained in a full-time comparable position as a processor. The evidence does not support Ms. Ramirez' allegation that she was ostracized after the May 19, 1998.

The evidence indicates that Ms. Ramirez voluntarily reduced her hours from full-time to part-time. The evidence does not support Ms. Ramirez' claim that she was constructively discharged.

The commission further finds that the company's written maternity leave policy violates RSA 354-A:7 in that it limits the benefit to 6 weeks, and does not offer the 75% pay for 6 to 8 weeks and 50% pay for 8 to 12 weeks. The policy is also in violation in that it requires a commitment of one-year full-time employment after maternity leave, a condition not required for other illnesses.

Accordingly, the commission rules that Debra Ramirez was not discriminated against and dismisses the case.

However, the commission orders Hadlock Insurance to adopt a non-discriminatory maternity leave policy and to submit a copy of the revised policy within 30 days after the receipt of this order.

1-20-00
Date



Commissioner Maureen Raiche Manning, Esq.
Presiding Officer for the Hearing Commissioners

Commissioner Elizabeth Lown
Commissioner Loren Jean

RULINGS ON REQUESTS FOR
FINDINGS OF FACT AND RULINGS OF LAW
SUBMITTED BY COMPLAINANT

1. Granted
2. Granted
3. Granted
4. Granted
5. Granted
6. Granted
7. Granted
8. Granted
9. Granted
10. Denied
11. Denied
12. Denied
13. Denied
14. Denied
16. Granted for the first sentence. Second sentence granted to the word "project." Denied that she was informed that she would be returned to her part time receptionist position.
17. Denied
18. Granted
19. Denied
20. Denied
21. Denied
22. Denied
23. Denied
24. Denied
25. Granted
26. Denied
27. Denied
28. Denied
29. Granted for the first sentence. Denied for the second sentence.
30. Denied
31. Denied
32. Denied
33. Granted
34. Denied
35. Granted
36. Denied
37. Denied
38. Denied
39. Denied
40. Denied
41. Denied
42. Denied
43. Denied

44. Denied
46. Denied
47. Denied
48. Denied
49. Denied
50. Denied

RULINGS ON REQUESTS FOR
FINDINGS OF FACT AND
RULINGS OF LAW
SUBMITTED BY RESPONDENT

Findings of Fact

1. Granted, but change "several" to "at least one."
2. Granted
3. Granted
4. Granted
5. Granted
6. Granted
7. Denied
8. Denied
9. Granted
10. Granted for the first sentence. No record of evidence to support the second sentence.
11. Granted
12. Granted
13. Granted
14. Granted for the first sentence. Denied "that she told Hadlock that she would not put a new baby into day care."
15. Granted
16. Granted
17. Granted
18. Granted
19. Granted
20. Granted that Ms. Ramirez told Hadlock that she wanted to resume part-time status due to stress and because she was tired of the drive.
21. Denied
22. Granted
23. Granted
24. Granted that Ms. Ramirez continued to do her job.
25. Granted
26. Denied for the first sentence. Granted for the second sentence.
27. Granted
28. Denied

Rulings of Law

29. Denied. Ms. Ramirez may have suffered adverse employment action due to her pregnancy, but it was de minimis. Had she reacted differently and not requested part-time status, she would have been allowed to work full time.
30. Granted
31. Denied. The commission finds only that there is insufficient testimony to support Ms. Ramirez' allegations.

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32. Denied. The commission finds insufficient evidence of constructive discharge.
 33. Granted
 34. Granted for the first sentence. The commission finds insufficient evidence of a causal connection. Denied for the second sentence. Granted for the third sentence.
 35. Granted
 36. Granted
 37. Granted
 38. Granted
 39. Granted for the first sentence.
 40. Granted
 41. Granted.